UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION

In Re: SHEILA A. HODGE,

Case No. 15-30684-DOF
Chapter 13
Hon. Daniel S. Opperman

DARRELL R. PARKS,
Plaintiff,

Adversary Case No: 15-03089

v.

SHEILA A. HODGE,
Defendant.
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COUNTER-COMPLAINT TO VACATE JUDICIAL LEIN IMPAIRING EXEMPTION ON PROPERTY

NOW COMES SHEILA HODGE, Debtor, Defendant and Counter-Plaintiff herein (further referred to as "Debtor"), and for her Counter-Complaint against Darrell Parks (further referred to as “Parks”) states as follows:

A. JURISDICTIONAL ALLEGATIONS

1. This Court has jurisdiction pursuant to 28 USC 157 (b)(2)(c) and 28 USC 1334 (a).

2. This is a core proceeding pursuant to 28 USC 157 (b)(2) (c) and (k).

3. Venue is proper pursuant to 28 USC 1409 (a).

B. GENERAL ALLEGATIONS

4. As reflected in the complaint-in-chief filed in this action, Darrell Parks (hereafter further referred to as Parks) obtained a judgment in the Genesee County Circuit Court on February 24, 2015, in the amount of $159,567.96, in case #09-288659-DO, *Shiela A. Hodge v. Darrell R. Parks*, a divorce action.

5. As part of the February 24, 2015 judgment, the Court authorized, but did not prepare nor enter, a QDRO under which Parks would be paid $700.00 per month from the monthly pension of General Motors of the Debtor.

6. The QDRO, had it been entered, or if it is later entered, would constitute a non-consensual judicial lien, and as such is subject to all defenses and remedies applicable thereto under the Bankruptcy Code.

7. Under Bankruptcy Code Section 101(36), the term "judicial lien" is defined as a lien obtained by "judgment, levy, sequestration, or other legal or equitable process or proceeding."

8. By means of her original Schedule C, the Debtor claimed an exemption in her full monthly pension of approximately $1,467.00 as paid through Fidelity Investments, the pension servicer for General Motors.

9. Parks has advised Debtor's counsel that he intends to seek to lift the automatic stay to secure the entry of the QDRO authorized by the Court, but it will serve judicial economy for that issue to be litigated here.

10. The lien being asserted by Parks against the Debtor's monthly pension, if not vacated, would impairs the Debtor's exemption available under Section 522 (d)(11)(D) of the Bankruptcy Code by divesting her of $700.00 of the monthly benefit that has been properly declared exempt by the Debtor in Schedule C.

11. Section 522(f)(1) of the Bankruptcy Code allows a Debtor to avoid the fixing of a lien on an interest in property *"to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is---*
(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5).

12. The statutory exemption referred to above, namely one found in Section 523(a)(5), is not applicable to this case because Parks' judicial lien arises from a judgment for an alleged debt other than a "domestic support obligation."

13. This Court possesses authority to grant equitable relief, which defines and clarifies the rights of the parties on a matter that is within the Court's jurisdiction.

C. PRAYER FOR RELIEF

WHEREFORE, Debtor Sheila Hodge prays that the Court enter an order AVOIDING the judicial lien asserted by Darrell Parks on the $159,567.96 awarded to him by the Genesee County Circuit Court, and ENJOINING the entry of a QDRO resulting from said award, and that the Court grant Plaintiff such other or further relief as may be just, equitable and proper.

/s/John A. Streby

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